

EXHIBIT D

1 **THE COURT:** Now you're repeating yourself.

2 Anything new?

3 **MR. BOUTROUS:** Yes. Let me just think the -- the new
4 part, Your Honor. That on the public interest focus, it's
5 Epic that's injuring the public interest with respect to
6 Unreal Engine and third parties. Epic is by -- by not
7 complying with the contract, it's Epic that triggered the
8 contractual rights, and they could fix that with a key stroke.

9 So when you look at all of the factors --

10 **THE COURT:** Well --

11 **MR. BOUTROUS:** -- they must meet them all.

12 **THE COURT:** -- doesn't matter at this point.

13 Are you telling me -- I understood that Apple had said --
14 and it really could be just hypothetical 'cause I don't think
15 that they would agree to go back on, but Apple said, look,
16 even if you -- even if you agreed, we're -- we are keeping you
17 off for a year, period.

18 And has --

19 (Simultaneous colloquy.)

20 **THE COURT:** -- change -- changed?

21 **MR. BOUTROUS:** Yes, Your Honor. The standard
22 language from the usual letter in this context was included in
23 the Unreal Engine letter. But Apple's willing to -- since
24 this court is involved and the court's supervision, if Epic
25 would just come into compliance, it can free Fortnite. It can

1 free Unreal Engine by just complying, paying what it owes and
2 we have a trial and summary judgment and proceed. And that
3 will protect the public.

4 **THE COURT:** What about -- what about this?

5 **MR. BOUTROUS:** Um.

6 **THE COURT:** What if that 30 percent -- well, I was
7 going to go -- to say, well -- what if it went into some
8 escrow account?

9 **MR. BOUTROUS:** That -- that would another least
10 address --

11 **THE COURT:** It's kind of -- you know, we're talking
12 about billion-dollar companies. I don't know why we would do
13 that but -- other than to give each side maybe a little bit to
14 hang their hat on.

15 So what if I said that?

16 **MR. BOUTROUS:** Well, Your Honor --

17 **THE COURT:** Since -- escrow account.

18 **MR. BOUTROUS:** Yeah, it -- that at least addresses
19 part of it. It's -- the fact that Epic International is, you
20 know, part of the -- the scheme to take these profits and take
21 it all.

22 But there's also the 30 percent that Epic -- is -- is
23 taking -- now it's Epic Games is taking as well for -- for
24 U.S. sales. But it really goes to this point, Your Honor,
25 just as a legal matter. It -- the same rationale with respect

1 to Fortnite applies to Unreal Engine. Epic can cure it in a
2 second. Just go into compliance. If it's not about the
3 money, pay Apple the money they owe Apple. It's -- and
4 then -- and then Unreal Engine, Apple's willing to let Unreal
5 Engine and Fortnite back on the system.

6 That's the proper approach here. And we'll -- I would
7 suggest to Ms. Forrest --

8 (Simultaneous colloquy.)

9 **MR. BOUTROUS:** Yes, Your Honor.

10 **THE COURT:** But respond to my question.

11 If -- if -- will Apple let Fortnite back on and would,
12 Ms. Forrest, Epic Games agree to go back on without -- without
13 their own payment option but all monies that flow from that
14 that go into a escrow account pending resolution of this
15 lawsuit? Yes or no? Or you don't know?

16 Mr. Boutrous?

17 **MR. BOUTROUS:** So if I'm understanding --

18 (Simultaneous colloquy.)

19 **MR. BOUTROUS:** Yes. Your Honor, if I'm understanding
20 the court's question, if Epic were to disable the hot fix,
21 their own payment system, go back to using IAP, the 30 percent
22 were to go into some sort of escrow account, and Unreal Engine
23 likewise would -- would come back on, I -- that would address
24 a lot of the issues.

25 I'd have to -- I would have to ask my client about it

1 since it is a significant thing, but it -- it does at least
2 start to address the issues. There's just no way we can have
3 Fortnite stay on the App Store defying IAP, defying app review
4 for the reasons the court already resolved -- had -- had
5 ruled. And with respect to Unreal Engine, seems like it's
6 easily fixable by -- by Epic.

7 **THE COURT:** Ms. Forrest?

8 **MS. FORREST:** Your Honor, we would not agree that the
9 scenario under which we are required not to have consumer
10 choice and competition on payment options --

11 **THE COURT:** I don't need a long answer. Yes -- so
12 it's sounds like no, you're not interested in that.

13 **MS. FORREST:** We're not interested, and we would also
14 say, Your Honor, just briefly, that the cases that we've
15 cited, the Supreme Court cases say that this court should not
16 give its assistance to unlawful provisions by monopolists and
17 that, therefore, we would be agreeing and trying to comply
18 with unlawful provision.

19 **THE COURT:** Yeah, I didn't buy that argument before.
20 I'm not particularly impressed with it now.

21 **MS. FORREST:** Can I -- Your Honor, can I say --

22 **THE COURT:** All right.

23 **MS. FORREST:** -- one -- a couple of things just in
24 response to things Mr. Boutrous had said earlier?

25 **THE COURT:** Quickly. And I mean briefly.